

**TITLE 710. OKLAHOMA TAX COMMISSION**  
**CHAPTER 55. MOTOR FUEL**

**RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking.

**PROPOSED RULES:**

Chapter 55. Motor Fuel [AMENDED]

**SUMMARY:**

The proposed rulemaking creates a new Subchapter 8 in Chapter 55 to implement the provisions of Sections 1 through 8 of HB 2234 [2021] which levies a tax at the rate of \$0.03 per kilowatt hour or its equivalent as determined by the Tax Commission on the electric current used to charge or recharge the battery or batteries of an electric vehicle, beginning January 1, 2024. [68:6501 et seq]

Other sections may be amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references, which do not change the interpretation or intent of the rules.

**AUTHORITY:**

68 O.S. §§ 203 and 6504 Oklahoma Tax Commission

**COMMENT PERIOD:**

Persons wishing to present their views in writing may do so by 4:30 p.m., February 7, 2023, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or by email to [lhaws@tax.ok.gov](mailto:lhaws@tax.ok.gov).

**PUBLIC HEARING:**

A public hearing is scheduled for 1:30 p.m., on Wednesday, February 8, 2023, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date by calling Lakesha Mackie at (405) 521-3133. Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a

particular entity due to compliance with the proposed Rules.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at <http://www.tax.ok.gov>.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at <http://www.tax.ok.gov>.

**CONTACT PERSON:**

Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194. Telephone number: 405-521-3133; Email: [lhaws@tax.ok.gov](mailto:lhaws@tax.ok.gov)

**TITLE 710. OKLAHOMA TAX COMMISSION**  
**CHAPTER 55. MOTOR FUEL**  
**SUBCHAPTER 8. ELECTRIC VEHICLE CHARGING TAX**

**710:55-8-1. Purpose**

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to the "Driving on Road Infrastructure with Vehicles of Electricity (DRIVE) Act of 2021" (68 O.S. §§ 6501 et seq.).

**710:55-8-2. Definitions**

The following words and terms, when used in the Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Charging station"** means equipment by which electric current is transferred to the power system of an electric vehicle together with the real property upon which such equipment is located or affixed;

**"Charging station operator"** means any person, firm, general partnership, limited partnership, limited liability partnership, corporation, limited liability company or any other lawfully recognized business entity that owns or operates or owns and operates a charging station in the state;

**"Electric vehicle"** means a 100%-electric or plug-in hybrid electric motor vehicle with the following characteristics:

(A) a 100%-electric motor vehicle originally equipped so that the vehicle:

(i) draws propulsion energy solely from a battery with at least twenty (20) kilowatt hours of capacity, which can be recharged from any external source of electricity,

(ii) is manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated exclusively on a rail or rails, and

(iii) which has at least four (4) wheels,

(B) a plug-in hybrid electric motor vehicle which is originally equipped so that the vehicle:

(i) draws propulsion energy from:

(I) an internal combustion engine, and

(II) a battery with at least five (5) kilowatt hours of capacity, which can be recharged from an external source of electricity,

(ii) is manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated exclusively on a rail or rails, and

(iii) which has at least four (4) wheels,

(C) The term "electric vehicle" does not include a vehicle that is manufactured primarily for off-road use, such as primarily for use on a golf course, and that has a maximum speed of thirty (30) miles per hour or less;

**"Legacy chargers"** means charging stations in operation prior to November 1, 2021, that have never had a metering system in place capable of measuring electricity transferred from the charging station to the vehicle or are incapable of measuring the time elapsed while actively charging a vehicle and placing a fee on the charging session; and

**"Public charging station"** means a location at which a charging station owner or operator conducts for-profit business using a metered system for the delivery of electric power to an electric vehicle and charges the customer either for the electricity transferred to the power system of the vehicle or for the duration of time during which electricity is transferred to the power system of the vehicle.

### **710:55-8-3. Tax rate**

(a) **Electric vehicle charging tax.** Beginning January 1, 2024, a tax of three cents (\$0.03) per kilowatt hour or an equivalent thereof is levied on the electric current used to charge or recharge the battery or batteries of an electric vehicle.

(b) **Tax base.** The amount of tax shall not include any fees or charges associated with the method for payment for the charging service, but shall be based only upon the rate of tax and the electricity transferred during the charging process.

(c) **Transactions excluded from the levy.** The tax shall not be applicable to the following

(1) Electric vehicles charged at a private residence at which the owner or occupant of the residence uses electric power paid for by the owner or occupant of the residence which is supplied to the residence by a regulated public utility, an electric cooperative or other wholesale level of electric supply, whether or not supplemented by electric power produced by the owner or occupant using solar energy or other methods to provide electric power to the residence.

(2) Electric vehicles charged at charging stations with a charging capacity of less than fifty (50) kilowatts and charging stations that do not require payment for use.

(d) **Charging stations exempted from the levy.** The following electric charging station classifications are exempted from the imposition of tax as provided:

(1) Legacy chargers until November 1, 2041.

(2) Public charging stations that have never charged a fee for their use until November 1, 2041.

### **710:55-8-4. When tax is due**

(a) The electric vehicle charging tax shall be remitted monthly by each charging station owner or operator on forms prescribed by the Tax Commission.

(b) The tax and any required report shall be filed with the Tax Commission not later than the twentieth day of the month following the month during which

the electric charging for an electric vehicle occurred.

(c) The charging station owner or operator shall separately state on any invoice or billing document provided to the customer the amount of the electric vehicle charging tax imposed and shall not include the tax amount in the total amount billed to the customer.

#### **710:55-8-5. Charging station registration requirements**

(a) Charging stations in operation prior to November 1, 2021 must register with the Oklahoma Tax Commission, Business Tax Services Division, Oklahoma City, OK 73194 not later than January 31, 2024.

(b) Charging stations which begin operations for the first time on or after November 1, 2021, must register with the Oklahoma Tax Commission, Business Tax Services Division, Oklahoma City, OK 73194 not later than fifteen (15) days after the date as of which the first business operations at the station site begins or by January 31, 2024, whichever is later.

#### **710:55-8-6. Charging station metering requirements**

Any public charging station for an electric vehicle constructed or which begins operations for the first time on or after November 1, 2021, must utilize a metering system that is capable of imposing the cost for the charging service using a unit per kilowatt hour or a comparable measurement, such as time elapsed while charging and the charging capacity of the charging station. The metering system shall include a system by which an audit of the electricity supplied through the system may be performed to determine the amount of electricity transferred to a customer and the cost charged by the charging station owner or operator for each unit of electricity transferred.

**TITLE 710. OKLAHOMA TAX COMMISSION  
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**RULE IMPACT STATEMENT**

Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 55 of Title 710 of the Oklahoma Administrative Code.

**DESCRIPTION:** The proposed rulemaking creates a new Subchapter 8 in Chapter 55 to implement the provisions of Sections 1 through 8 of HB 2234 [2021] which levies a tax at the rate of \$0.03 per kilowatt hour or its equivalent as determined by the Tax Commission on the electric current used to charge or recharge the battery or batteries of an electric vehicle, beginning January 1, 2024. [68:6501 et seq]

**CLASSES AFFECTED:** Charging station operators / owners and electric vehicle owners.

**CLASSES BENEFITED:** Charging station operators / owners; and electric vehicle owners will benefit by the proposed amendments because it updates the Tax Commission's rules consistent with recent legislation.

**PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS:** There are no anticipated increase to costs associated with the proposed rule changes.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** The rulemaking action does not levy, implement, or increase an existing fee.

**PROBABLE COSTS TO THE AGENCY:** Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

**ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule changes at this time.

**SMALL BUSINESS IMPACT:** After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

**ALTERNATIVE METHODS AND COSTS OF COMPLIANCE:** There are no less costly or non-regulatory methods or less intrusive methods for achieving the

purpose of the proposed rules. No formalized compliance cost minimization measures have been pursued.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

**DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED:** The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

**DATE PREPARED:** December 13 2022